

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

PRESIDENT OF TOWN COUNCIL
ELIZABETH A. LOPER, elected official of the
Town of Briny Breezes, *et al.*,

Plaintiffs,

Case No. 1:24-cv-20604-MAD

vs.

ASHLEY LUKIS, in her official capacity as
Chair of the Florida Commission on Ethics, *et
al.*,

Defendants.

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NOTICE OF VACATUR OF AUTHORITY

Plaintiffs hereby provide notice that the Eleventh Circuit’s decision in *Warren v. DeSantis*, 90 F.4th 1115 (11th Cir. 2024), a case that Plaintiffs partly relied on in their summary judgment papers for refuting the contentions that the *Garcetti*¹ government-speech exception and the *Pickering*² balancing test are applicable to this case, has recently been *sua sponte* vacated and superseded by *Warren v. DeSantis*, 125 F.4th 1361 (11th Cir. 2025). Notably, the vacatur was not on the merits but rather due to the fact that the case had since become moot. The new *Warren* decision, meanwhile, does not address the correctness of the panel’s original reasoning that “[t]he Supreme Court [and the Eleventh Circuit] ha[ve] never applied *Garcetti* to elected officials,” that “*Garcetti*’s rationale makes little sense for elected officials,” that “[e]very other circuit to have considered th[e] issue [of whether *Pickering* applies to elected officials] has . . . excluded elected officials from *Pickering* balancing,” and that the “rationale undergirding *Pickering* does not support its application to elected officials.”

¹ *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

² *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968).

WEISS SEROTA HELFMAN
COLE + BIERNAN P.L.
200 East Broward Blvd., Ste. 1900
Fort Lauderdale, FL 33301
Telephone: (954) 763-4242
Facsimile: (954) 764-7770

By: /s/ Jamie A. Cole
JAMIE A. COLE
Florida Bar No. 767573
jcole@wsh-law.com
msaraff@wsh-law.com
EDWARD G. GUEDES
Florida Bar No. 768103
eguedes@wsh-law.com
szavala@wsh-law.com
ANNE R. FLANIGAN
Florida Bar No. 113889
aflanigan@wsh-law.com
JEREMY S. ROSNER
Florida Bar No. 1018158
jrosner@wsh-law.com
kdoyle@wsh-law.com

Counsel for Plaintiffs